

2019 Supporting Statement for OMB 0596-0105

Land Exchanges

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Statutes and Regulations:

- 7 USC 428 a(a) - Acquisition of land; options
- 7 USC 1011 - Powers of Secretary of Agriculture
- 16 USC 484a - Exchange of lands in national forests; public schools; deposit of funds by school authority with insufficient exchange land; limitations on use
- 16 USC 485 - Exchange of lands in national forests; cutting timber in national forests in exchange for lands therein
- 16 USC 486 - Exchange of lands in national forests; reservations of timber, minerals, or easements
- 16 USC 516 - Exchange of lands in the public interest; equal value; cutting and removing timber; publication of contemplated exchange
- 16 USC 551 - Protection of national forests; rules and regulations
- 16 USC 555a - Exchange of lands
- 43 USC 1701 - Congressional declaration of policy
- 43 USC 1715 - Acquisitions of public lands and access over non-Federal lands to National Forest System lands
- 43 USC 1716 - Exchanges of public lands or interests therein within the National Forest System
- 43 USC 1740 - Rules and Regulations
- Title 36 CFR 254, Subpart A - Land Exchange

Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). A non-Federal party can initiate land exchanges and include: an individual; a non-Federal landowner; a landowner's agent (broker, third party); non-Federal public agency (state or local government); corporation; or other legal entity capable to hold title and convey land.

Pursuant to section 254.4 - Each land exchange requires preparation of an *Agreement to Initiate*, specifying the preliminary, non-binding intentions of the non-Federal party and the Forest Service in pursuing a land exchange. As the

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exchange proposal develops, the Forest Service and the non-Federal party may enter into a binding *Exchange Agreement*, pursuant to section 254.14 - Exchange Agreement. This document is optional, but when used, records conditions necessary to complete the exchange.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

a. What information will be collected, reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)

Each land exchange requires preparation of an *Agreement to Initiate*, (36 CFR 254, subpart A, §254.4) and must include:

- The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;
- A description of the lands or interest in lands being considered for changes;
- A statement by a party, other than the United States and State and local governments, that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;
- A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;
- A time schedule for completing the proposed exchange;
- An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;
- A statement specifying whether compensation for costs assumed will be allowed;
- Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands;
- A grant of permission by each party to physically examine the lands offered by the other party;
- The terms of any assembled land exchange arrangement;
- A statement as to the arrangements for relocation of any tenants occupying non-Federal lands;
- A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands;
- Description of process used to exchange documents of conveyance upon successful completion of the exchange proposal.

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As the exchange proposal develops, the Forest Service and the non-Federal land-exchange party may enter into a binding *Exchange Agreement* (36 CFR section 254.14). The *Exchange Agreement* documents conditions needed to complete the exchange and must contain:

- Identification of the parties, description of the lands and interests to be changed, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete an exchange.
- Inclusion of the terms regarding responsibility for removal, indemnification (“hold harmless” agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and
- The agreed upon values of the involved lands, until consummation of the land exchange.

The information collected is stored under file code 5430, and the appropriate secondary or tertiary category. Retention periods are a minimum of 3 years, but vary depending upon the secondary or tertiary category. (FSH 6209.12) Examples of formats for *Agreement to Initiate* and *Exchange Agreement* are separate attachments to this information collection package.

- b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.**

The Forest Service collects the information from the non-Federal party (or parties) participating in the land exchange. Land exchanges can be initiated by either the Forest Service or a non-Federal party (or parties). Non-Federal parties include: an individual; a non-Federal landowner; an agent of a landowner (broker, third party); a non-Federal public agency (state or local government); a corporation or other entity legally capable to hold title to and convey land. Information is not collected on the *Agreement to Initiate* until the exchange has progressed beyond the proposal stage. The *Exchange Agreement*, though binding, is not required. The exchange may be completed without this form being prepared.

- c. What will this information be used for? (provide ALL uses)**

All parties use the collected information to facilitate completion of the land exchange. All involved parties use the mandatory *Agreement to Initiate* as a record of the non-binding decision to continue with the exchange proposal and to document agreed upon specific details of the exchange as required by 36 CFR 254.4(c). The parties agree upon the steps that need to be taken and who will pay for the costs of the steps.

The *Exchange Agreement*, if used, is a binding contract between the Forest Service and non-Federal exchange parties to the terms, conditions and property values identified prior to closing.

- d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the**

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information? If so, what are they?

Forest Service personnel collect the information via telephone, e-mail or in person from parties involved in the exchange.

e. How frequently will the information be collected?

Initially, collection of information occurs once for each land exchange being processed. Collection of additional information occurs if amendments to the agreement receive mutual consent.

f. Will the information be shared with any other organizations inside or outside USDA or the government?

The information is not shared beyond the parties to the exchange. It is the general intent of all parties that these land adjustment transaction documents will be considered "pre-decisional working papers" not subject to premature availability prior to the point which concludes evaluation of the proposal through the agency's established, required process and policy.

g. If this is an ongoing collection, how have the collection requirements changed over time?

Collection requirements have not changed over time.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The Forest Service prepares all agreement documents for the respondent; the non-Federal party simply reads and signs the documents. The Forest Service uses e-mail to send the documents to the non-Federal party in instances when a short-turnaround is necessary.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Each land exchange is a unique situation. Each document has some standard phrasing. The *Agreement to Initiate* and *Exchange Agreement* include language specific to the particular circumstances of each exchange. While other Federal agencies participate in land exchanges, those agencies collect information pertinent to those specific exchanges and such information is not relevant to this collection.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

As designed, the agreement process minimizes the amount of time the

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exchange party must spend providing information, reading and commenting. There may be small business that sign an *Agreement to Initiate* for a land exchange, but the Forest Service has no control over who proposes a land exchange.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Collection of this information is necessary for land exchanges to occur. The purpose of the majority of land exchanges is consolidation of or changes to landownership patterns. Lack of exchanges would negatively affect the public, as the Forest Service and non-Federal landowners would have to spend significant funds on survey of boundaries. In addition, non-Federal landowners would incur costs of encroachment and trespass on Federal lands.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, or by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances. The collection of information occurs in a manner consistent with the guidelines in 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in

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response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

The Federal Register published a 60-day notice for comments on July 31, 2019, Vol. 84, page 37235. No comments were received in response to this request for comment.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Forest Service contacted the following entities to request feedback on the preparation of the *Agreement to Initiate* (ATI) and the *Exchange Agreement* (EA). The three entities are conservation organizations who work with Federal/state/local governments, private companies, and many individual landowners to conserve lands. One entity had no comments. One entity had no comment on the exchange agreement, but noted that Exhibits A-D on the Agreement to Initiate form are valuable for communicating expectations and costs allocations for a transaction in its early stages between the Forest Service and non-Federal parties. The same entity asked whether for assembled land exchanges one paragraph could be revised to accommodate value equalization for assembled exchanges via payment of cash as opposed to only via acreage adjustment. The Forest Service agrees that cash equalization is allowed for assembled land exchanges, so a statement was added to Exhibit E. The third entity had the following eight (8) comments, and below each comment are the Forest Service responses.

1. The following was an inquiry regarding the ATI provision stating “or issuance of a patent or deed by the United States if no exchange agreement is executed”, does issuance of a patent require some sort of agreement with the non-Federal party?

Forest Service response: No change to the ATI is necessary. An exchange agreement is optional in some situations, but recommended. If no exchange agreement is signed, then non-Federal party will need to sign the deed transferring property to USA at closing when USA issues patent or signs deed transferring public lands to non-Federal party.

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Although the use of an exchange agreement is optional in most situations, it is recommended that it be used in all land exchanges and is mandatory in the following situations:

1. Hazardous substances are present (36 CFR 254.14).
 2. Cases which require phased-closings (sec. 31.22).
 3. There are contractual agreements, other than title warranties, that survive closing.
 4. There is direct deeding to more than one non-Federal party (sec. 31.24).
2. The following was an inquiry regarding the ATI provision stating “Each party to this agreement is responsible to provide the other documentation of the existence or non-existence of storage of hazardous substances stored on their respective lands for 1 year or more or disposed of or released on said lands.” What type of documentation is contemplated?

Forest Service response: No change to the ATI is necessary. A questionnaire shall be filled out by the non-Federal land owner/manager for compliance with CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act of December 11, 1980, as amended (94 Stat. 2767; 42 U.S.C. 9601, et seq.). This act requires the Forest Service to identify and disclose the presence of hazardous materials on Federal and non-Federal lands considered in a land exchange.

3. The following was an inquiry regarding the Exchange Agreement provision stating, “Pursuant to the acts of _____, the non-Federal party does hereby agree to convey to the United States of America the real property described in Schedule A, attached hereto and made a part hereof. In exchange therefore, the United States of America agrees to convey to the non-Federal party by _____ 4/ _____ issued by the _____, the real property described in Schedule B, attached hereto and made a part hereof.” Schedules A and B aren't attached, but per Agreement to Initiate both Schedules A and B will include outstanding rights and reservations. As written it could be read that the non-federal party has to convey even if it's not satisfied with the federal lands. That said, if Schedule B includes outstanding rights and reservations this should not be a concern.

Forest Service response: No change to the EA is necessary. Schedules A and B are the same forms attached to the ATI, and will be completed with all information regarding title and encroachments before attaching to the ATI. The EA is a contractual agreement by both parties to the exchange to complete the exchange, so if either party is dissatisfied with the lands offered for exchange, then they can choose not to sign the EA.

4. The following was an inquiry regarding the Exchange Agreement provision stating, “Second, the non-Federal party and the United States of America agree to deliver all necessary documents to a mutually acceptable party who

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shall act as escrow holder.” Important change to request: The option to have the Forest Supervisor be the escrow holder should be deleted. We would want to close in escrow with an agreed upon title company to ensure a neutral third party is closing in accordance with everyone’s instructions and issuing title policies providing coverage through the date of closing. It makes no sense to have the USFS act as an escrow holder – that role belongs with a neutral, third party title company, and not with one of the parties to the transaction. At best, this approach would be very unwieldy without timely responses from the escrow holder.

Forest Service response: No change to the EA is necessary. The EA already allows the escrow to be held by a third party. In some very small land exchanges, the parties close without using an escrow agent.

5. The following was an inquiry regarding the Exchange Agreement provision stating, “Third, the non-Federal party agrees to furnish title evidence on the real property described in Schedule A in a form satisfactory to the Office of the General Counsel of the United States Department of Agriculture.” Note the USFS is not required to provide title info. Since most property will be conveyed by patent this should be a significant additional expense to Non Federal party. Would this be over and beyond what a title company would require to issue title insurance?

Forest Service response: No change to the EA is necessary. There is not requirement to furnish title evidence because there can be no question about the United States of America as owner of Federal lands. If conveyed by patent, the United States of America has been the only owner, so a title search would be futile. If conveyed by deed, it means the Federal land was acquired and met Department of Justice Title Standards for acquisition, so no title search is needed. Regarding the inquiry, yes there may be title information required beyond what is provided by a title company or report on title by an attorney. The Forest Service is required to do site visits to verify no occupancy or uses, and there are often title exceptions that need to be researched and resolved. Also, if there are severed interests, the non-Federal party may need to determine who holds the partial interests that were conveyed.

6. The following was an inquiry regarding the Exchange Agreement provision stating, “In the event any such loss or damage occurs from any cause, including acts of God, to the real property described in Schedules A and B, prior to execution of deed or issuance of ?patent? or close of escrow, either party may refuse without liability to complete the exchange.” There could be a lag time between issuance of deed/patent and closing during which damage from acts of God could occur.

Forest Service response: No change to the EA is necessary. There may be a lag

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time, and the EA allows either party to refuse to complete the exchange if an act of God occurs.

7. The following was an inquiry regarding the Exchange Agreement provision stating, "Each party to this exchange agreement is responsible to provide the other documentation of the existence or non-existence of storage of hazardous substances stored on their respective lands for one (1) year or more or disposed of or released on said lands. If evidence of hazardous substances are found, either party may refuse without liability, to complete the exchange (see Attachment A)." What documentation would fulfill this provision? It would be good to review the language in Attachment A. It should reflect the attached options should either party find the properties contaminated.

Forest Service response: No change to the EA is necessary. See responses to comments #2 and #3 above.

8. The following was an inquiry regarding the Exchange Agreement provision stating, "This exchange is subject to Secretary approval and/or 30-day congressional oversight. If floodplains are involved, closing of this exchange shall not occur until the 30-day publication period has expired." What 30 day publication period? Presumably this language doesn't eliminate the possibility of Project Level Pre-Decisional Administrative Review that is not subject to objection or appeal.

Forest Service response: No change to the EA is necessary. Publication of a Notice of Exchange Proposal (NOEP), also known as the 4-week notice, is required after the agreement to initiate (ATI) is finalized (36 CFR 254.8). This does not impact any regulations or directives regarding objections or appeals.

Specific entities contacted:
The Trust for Public Land
100 M Street SE, Suite 700
Washington DC 20003

The Nature Conservancy
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203

The Conservation Fund
1655 N Fort Myer Drive, Suite 1300
Arlington, VA 22209

- 9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.**

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There will be no payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Verbiage in the Agreement to Initiate states “All documents pertaining to both Federal and non-Federal lands necessary for the evaluation, processing, and consummation of a land adjustment transaction, including but not limited to appraisals, timber cruises, specialist reports, geology/mineral reports, title and other property information, are subject to public availability pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). However, it is the general intent of all parties that these land adjustment transaction documents will be considered “pre-decisional working papers” not subject to premature availability prior to the point which concludes evaluation of the proposal through the agency’s established, required process and policy.”

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Information of a sensitive nature is not collected.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**

Table 1: Total Number of Responses to ICR, FY2017-2019*

(a) Description of the Collection Activity	(c) Number of Respondents		
	FY2017	FY2018	FY2019
Agreement to Initiate: <ul style="list-style-type: none"> • Nonfederal exchange partner’s interview with FS, • Nonfederal exchange partner’s review of legal documents 	2	0	0

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(a) Description of the Collection Activity	(c) Number of Respondents		
Exchange Agreement: <ul style="list-style-type: none"> • Nonfederal exchange partner's interview with FS, • Nonfederal exchange partner's review of legal documents 	1	0	0

*Numbers reflect actual land exchange cases for each year. All exchanges require an Agreement to Initiate to be signed. Exchange Agreements are optional; and are not always prepared. There has been a drop in the number of exchanges being processed due to declines in funding and staffing.

Table 2 Estimated Annual Burden

(a) Description of the Collection Activity	(b) Form Number	(c) Estimated Annual Number of Respondents*	(d) Number of responses annually per Respondent	(e) Total annual responses (c x d)	(f) Estimate of Burden Hours per response	(g) Total Annual Burden Hours (e x f)
Agreement to Initiate: <ul style="list-style-type: none"> • Nonfederal exchange partner's interview with FS, • Nonfederal exchange partner's review of legal documents 	0596-0105	2	1	2	8	16
Exchange Agreement: <ul style="list-style-type: none"> • Nonfederal exchange partner's interview with FS, • Nonfederal exchange partner's review of legal documents 	0596-0105	1	1	1	4	4
Total				3		20

*The estimated number of respondents is based on previous year's actual numbers, trends, and expected future activity.

• Record keeping burden:

There is no record keeping requirement imposed upon the respondents.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

Table 3. Estimated Cost Burden on Respondents

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(a) Description of the Collection Activity	(b) Estimated Total Annual Burden on Respondent (Hours)	(c) Estimated Average Hourly Salary*	(d) Estimated Cost to Respondent
Agreement to Initiate	16	\$50	\$800
Exchange Agreement	4	\$50	\$200
Totals	20	---	\$1000

*Income varies depending upon respondent. Often, private landowners provide information themselves, and are not compensated for their time to provide information. When calculating burden for corporations/government agencies/conservation entities, salary is based on higher-level administrative positions estimated from the most recent Bureau of Labor Statistics website: http://www.bls.gov/oes/current/oes_nat.htm

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital operation and maintenance costs.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

Table 4. Estimated Cost to Federal Government

(a) Description of the Collection Activity	(b) Estimate of Forest Service Burden Hours per response	(c) Number of responses annually	(d) Estimated Total Annual Burden on Forest Service (Hours)	(e) Estimated Cost per Hour for Forest Service*	(f) Estimated Cost to the Forest Service
Agreement to Initiate	8	2	16	\$50.00	\$800
Exchange Agreement	4	1	4	\$50.00	\$200
Total	12	3	20	---	\$1000

* Agreement to Initiate is prepared at the GS11/12 level, reviewed at the GS12/13 level and approved at the GS-14/15 level. Estimated hourly wage is approximated from Federal Salary Table 2019-GS-Base.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

Changes reflect a decrease in the number of land exchanges executed each year in the Forest Service. The Forest Service has no control over who proposes a

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land exchange. Respondents are the proponents of land exchanges that the Forest Service has agreed to move forward with after a feasibility analysis is complete.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

There are no plans to publish the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Since no forms are used, in the previous Information Collection Request the Forest Service requested and was granted approval to omit the expiration date from the correspondence and documents that are prepared under the OMB approval for this collection. Forest Service requests to continue the approval to not display the OMB expiration date.

18. Explain each exception to the certification statement identified in item 19, "Certification Requirement for Paperwork Reduction Act."

The agency is able to certify that the collection of information encompassed by this request complies with 5 CFR 1320.